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EXAMINER				
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ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/786,450

Applicant(s)

ZAKHAROFF, MICHAEL JACK

Examiner

RICHARD G. KEEHN

Art Unit

2456

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. **Claims 1-30 have been examined and are pending.**
2. **Applicant's arguments are not persuasive. Accordingly, this Office action is made FINAL.**

Response to Arguments

3. Applicant's arguments filed 6/10/2010 have been fully considered but they are not persuasive.
 - a. Applicant argues that the Drawings are proper. However, figure 4 contradicts the claimed limitation "moving email messages **having a common characteristic with a successfully delivered email message** from said second queue to said first queue". In stark contrast to the claimed limitation, Figure 4 shows that the **only** path a message can take having a **"shared common characteristic"** (Fig 4, element 70) is to HQ, the slower queue, NOT to FQ, the faster queue, either after it is first generated in Figure 4, element 60 (which is not from a second queue) or after a delivery failure from FQ (Figure 4, element 63, which is also not from a second queue). According to the claim limitation "moving email messages stored in said first queue to a second queue based on receipt of a delivery failure status", HQ must be the second queue, a slower queue, because as Figure 4 depicts, the message is moved from FQ to HQ after the delivery failure. Looking at Figure 4, element 63, if a delivery failure exists at FQ, the message is moved from FQ into HQ. In addition, the claim language clearly

indicates that the second queue's sending rate is slower than the first queue's sending rate. Therefore HQ must be a slower queue than FQ as claimed. Therefore there is no movement from the second queue to the first queue **based on a common characteristic**, let alone a common characteristic of a successfully delivered email message. Therefore, Figure 4 contradicts that which is claimed in Claim 1.

b. Applicant also argues that the cited prior art does not disclose the claimed limitations. However, Applicant has mischaracterized Examiner's rejection. Applicant is encouraged to take a closer look at which claim language was rejected by which references. In arguing that the Office looked to D-Souza to solve the deficiencies of Shaw, then to Sherwood to solve the deficiencies of Shaw and D'Souza, Applicant has argued more claim language than Examiner used for rejection of the secondary references. For example, Applicant argues on Page 17 that "[N]owhere does Sherwood disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue." yet Examiner used the Sherwood reference merely to disclose "having a common characteristic with a successfully delivered message." Applicant needs to argue the combination of references as they were cited. Said combination of references teaches all of the claimed limitations as indicated below and in the previous Office action.

- c. Applicant also argues that the cited combination of references is improper. However, all of the references are directed toward electronic message delivery, hence are in the same field of endeavor, and the reasons for combining are stated in the rejection below.
- d. For the reasons stated above, Applicant's arguments are respectfully traversed as unpersuasive.

Drawings

- 4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of Claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
- 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. Clearly, figure 4 contradicts the claimed limitation "moving email messages **having a common characteristic with a successfully delivered email message** from said second queue to said first queue". In stark contrast to the claimed limitation, Figure 4 shows that the **only** path a message can take having a **"shared common characteristic"** (Fig 4, element 70) is to HQ, the slower queue, NOT to FQ, the faster queue, either after it is first generated in Figure 4, element 60 (which is not from a second queue) or after a delivery failure from FQ (Figure 4, element 63, which is also not from a second queue). According to the claim limitation "moving email messages stored in said first queue to a second queue based on receipt of a delivery failure status", HQ must be the second queue, a slower queue, because as Figure 4 depicts, the message is moved from FQ to HQ after the delivery failure. Looking at Figure 4, element 63, if a delivery failure exists at FQ, the message is moved from FQ into HQ. In addition, the claim language clearly indicates that the second queue's sending rate is slower than the first queue's sending rate. Therefore HQ must be a slower queue than FQ as claimed. Therefore there is no movement from the second queue to the first queue **based on a common characteristic**, let alone a common characteristic of a successfully delivered email message. Therefore, Figure 4 contradicts that which is claimed in Claim 1.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. **Claims 1-2, 4-6, 8-11, 13-15, 17-18, 20-22, 24-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,282,565 B1 (Shaw et al.), and further in view of US 2004/0236966 A1 (D'Souza et al.) and US 7,085,812 B1 (Sherwood).**

As to Claims 1, 10, 17 and 24, Shaw et al. disclose a communications system, delivery server, electronic mail communications method and computer-readable medium having computer-executable instructions for performing steps, hereafter referred to as the "system", comprising:

at least one destination server for hosting a plurality of electronic mail (email) message boxes (Shaw et al. – Figure 1, Item 110 discloses the Incoming Email Server);

a plurality of communications devices for generating email messages each associated with a respective message box (Shaw et al. – Figure 1, items 171, 173, 175, 161, 162 and 16n disclose communications devices generating email messages with user mailboxes); and

a delivery server comprising a plurality of queues and a controller for (Shaw et al. – Figure 1, items 100, 140, 151, 153 and 155 disclose the Enterprise Email System, Email Queuing and Mailbox System comprising mail queues);

moving email messages stored in said first queue to a second queue based upon receipt of a delivery failure message (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout failure. A timeout failure indication is a message that is received by the logic using the timeout information. The claim does not specify the origin of the message), and

the email messages generated by said communications devices (Shaw et al. — Column 1, lines 36-39 disclose email messages being generated by users); and

with a successfully delivered email message (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout failure. Figure 4 element 414 discloses the detection of successful email message delivery).

Shaw et al. disclose the email delivery server with queues, but do not explicitly disclose storing in a first queue, and attempting to send to said at least one destination server at a first sending rate; and attempting to send stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate; and moving from said second queue to said first queue, but D'Souza et al. disclose

storing in a first queue, and attempting to send to said at least one destination server at a first sending rate (D'Souza et al. — Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found. ¶ [0029] discloses that there can be multiple levels of queues with gradually slower send rates. Figure 3 discloses sending at multiple rates depending on which queue the packet is placed into),

attempting to send stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate (D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found.), and

moving from said second queue to said first queue (D'Souza et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the source address is known; D'Souza et al. – Page 2, ¶ [0028] disclose the decision engine storing packets in a faster send rate queue if the source address is found or a slower send rate queue if the source address is not found. ¶ [0029] discloses that there can be multiple levels of queues with gradually slower send rates. Figure 3 discloses sending at multiple rates depending on which queue the packet is placed into).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine sending data at fast, then gradually slower sending rates and moving data to be sent into queues based on send rate, both up in rate and down taught by D'Souza et al., with a delivery server comprising a plurality of queues and a controller for moving email messages stored in said first queue to a second queue based upon a delivery failure taught by Shaw et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to mitigate the effects of transmission flooding by those deemed to have adverse effect on communication throughput (D-Souza et al. - ¶ [0014]).

The combination of Shaw et al. and D'Souza et al. discloses the email delivery server with queues and detection of email message delivery success or failure, but do not explicitly disclose having a common characteristic with a successfully delivered message, but Sherwood discloses

having a common characteristic with a successfully delivered message (Sherwood discloses the table of email recipients with status of successful delivery confirmation and the delivery confirmation list— Figure 2, elements 250, 245, 200; Figure 3, elements 300, 320 and 330; Column 4, lines 45-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine having a common characteristic with a successfully delivered message taught by Sherwood, with detecting success or failure of email delivery taught by the combination of Shaw et al. and D'Souza et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide selective application of email delivery options (Sherwood – Column 2, lines 23-29).

As to Claims 2, 11, 18 and 25, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 1, 10, 17 and 24 respectively, wherein the delivery failures are based upon a failure to deliver email messages to respective message boxes (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises a common message box (D'Souza et al. - Page 2, ¶ [0030] discloses the common characteristic of status of whether the source address is known).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 4, 13, 20 and 27, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 1, 10, 17 and 24 respectively, wherein said controller stores directly in said second queue email messages generated by said communications devices sharing the common characteristic with an email message already stored in said second queue (D'Souza et al. - Page 2, ¶ [0028] discloses direct storage into the slower queue based on the common status of unknown source address; Shaw et al. discloses email messages as previously discussed).

The motivation and obviousness arguments the same as in Claim 1.

As to Claims 5, 14, 21 and 28, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 1, 10, 17 and 24 respectively, wherein said second queue comprises a plurality thereof arranged in a hierarchy each having a respective storage interval associated therewith (D'Souza et al. - Page 2, ¶¶ [0028 - 0029] disclose multiple classes of queues being serviced from highest to lowest rate), the storage intervals successively increasing from a highest queue in the hierarchy to a lowest queue (D'Souza et al. - Page 2, ¶¶ [0028 - 0029] disclose multiple classes of queues being serviced from highest to lowest rate);

wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout); and

wherein said controller moves email messages stored in a higher queue in the hierarchy to a next lower queue in the hierarchy after being stored in said higher queue for the storage interval thereof (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on delivery timeout).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6, 15, 22 and 29, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 5, 14, 21 and 28 respectively, wherein said controller attempts to send messages from each of said queues in the hierarchy at successively decreasing sending rates from said highest queue to said lowest queue (D'Souza et al. – Page 2, ¶ [0029] discloses multiple classes of queues between fastest to slowest).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 8, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the communications system of Claim 1 wherein at least one of said plurality of communications devices comprises a wireless communications device (Shaw et al. – Column 1, lines 22-27 discloses internet which one of ordinary skill in the art at the time

the invention was made would know to include wireless devices such as phones (line 17), pda's, laptops etc.).

As to Claim 9, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the communications system of Claim 1 further comprising a wide area network (WAN) connecting said at least one destination server and said delivery server (Shaw et al. – Column 1, lines 22-27 discloses internet which one of ordinary skill in the art at the time the invention was made would know to include wide area networks).

9. Claims 3, 12, 19 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shaw et al., D'Souza et al. and Sherwood as applied to claims 1, 10, 17 and 24 above respectively, and further in view of US 2003/0145106 A1 (Brown).

As to Claims 3, 12, 19 and 26, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 1, 10, 17 and 24 respectively,

wherein the delivery failures are based upon a failure to deliver email messages to said destination servers (Shaw et al.—Column 11, lines 40-46 disclose the email message being rerouted based on status of delivery timeout); and

wherein the common characteristic comprises having respective message boxes hosted by a common destination server (D'Souza et al. – Page 2, ¶ [0028] discloses

direct storage into the slower queue based on the common status of unknown source address).

The combination of Shaw et al., D'Souza et al. and Sherwood does not explicitly disclose wherein said at least one destination server comprises a plurality of destination servers, but Brown discloses wherein said at least one destination server comprises a plurality of destination servers (Brown – Page 2, paragraph [0026] discloses the group of email servers).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said at least one destination server comprises a plurality of destination servers taught by Brown with at least one destination server for hosting a plurality of electronic mail (email) message boxes taught by the combination of Shaw et al., D'Souza et al. and Sherwood.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide an intermediary to improve network traffic flow (Brown – Page 1, paragraphs [0005-0007]).

10. Claims 7, 16, 23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Shaw et al., D'Souza et al. and Sherwood as applied to claims 5, 14, 21 and 28 above respectively, and further in view of US 5,632,011 (Landfield et al.).

As to Claims 7, 16, 23 and 30, the combination of Shaw et al., D'Souza et al. and Sherwood discloses the system of Claims 5, 14, 21 and 28 respectively.

The combination of Shaw et al., D'Souza et al. and Sherwood does not disclose wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof, but Landfield et al. discloses wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof (Landfield et al. – Column 2, lines 12-22 disclose the deletion of undeliverable messages from the queue. The fact that it is determined undeliverable is the same as the applicant's determination on non-deliverability based on failure to deliver at the lowest queue).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof taught by Landfield et al., with wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure taught by the combination of Shaw et al., D'Souza et al. and Sherwood.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve management of email by allowing undeliverable emails to be discarded (Landfield et al. – Column 1, lines 56-61).

Examiner Notes

- 11.** Examiner recommends looking to the specification's ¶ [0038] for disclosed subject matter that does not appear to have been claimed. Inclusion *in sufficient detail* and *in independent form* may help to overcome the cited prior art.
- 12.** Examiner recommends expanding the definition of "*sending rate*" in independent form. "Sending rate" is a very broad phrase and can be interpreted many different ways, even in view of the specification. Be specific about what is meant by the phrase "sending rate." Doing so, along with the previous recommendation, may overcome the cited prior art.
- 13.** The aforementioned recommendations do not necessarily indicate allowable subject matter. Further search and/or reconsideration may be required depending on any response. The recommendations are presented to assist in advancing prosecution. Any decision on whether the aforementioned recommendations overcome the prior art will need to be determined after seeing any proposed amendments and/or arguments.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHARD G. KEEHN whose telephone number is (571)270-5007. The examiner can normally be reached on Monday through Thursday, 9am - 8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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RGK

